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JUN 05 2009

Attorney Docket No.: 403104-A-01-US (Orbach)
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Julian James Orbach

Application No.: 10/810,526

Confirmation No.: 1176

Filed: 03/27/2004

Art Unit: 2617

For: Method and Apparatus For Incoming Call
Pause Notification

Examiner: Doan, Kiet M.

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

06/08/2009 JVONG1 00000029 10010526

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540.00 OP

Dear Sir:

This brief is filed within 1 months of the Notice of Panel Decision
from Pre-Appeal Brief Review received in this case on 05/07/2009.

The fees required under § 41.20(b)(2) are dealt with in the
accompanying FEE TRANSMITTAL.

This brief contains items under the following headings as required
by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- | | |
|-------|---|
| I. | Real Party In Interest |
| II | Related Appeals and Interferences |
| III. | Status of Claims |
| IV. | Status of Amendments |
| V. | Summary of Claimed Subject Matter |
| VI. | Grounds of Rejection to be Reviewed on Appeal |
| VII. | Argument |
| VIII. | Claims |
| IX. | Evidence |

I hereby certify that this correspondence is being facsimile transmitted to Commissioner, at fax No. 571-273-8300,
on

06/05/2009

Date Being Faxed


Signature

Serial No. 10/810,526

X. Related Proceedings

Appendix A	Claims
Appendix B	Evidence
Appendix A	Related Proceedings

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Avaya Inc. per Reassignment on Reel/Frame 021156/0082,
recorded 06/26/2008.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 25 claims pending in application (claims 12-22, 34-44, 56, 57, and 60).

B. Current Status of Claims

Claims canceled: 38 (claims 1-11, 23-33, 45-55, 58, 59, and 61-63)

Claims objected to: none

Claims withdrawn from consideration but not canceled: none

Claims pending: 25 (claims 12-22, 34-44, 56, 57, and 60)

Serial No. 10/810,526

Claims allowed: none

Claims rejected: 25 (claims 12-22, 34-44, 56, 57, and 60)

C. Claims On Appeal

The claims on appeal are claims 12-22, 34-44, 56, 57, and 60.

IV. STATUS OF AMENDMENTS

The Appellant has not amended the claims.

Accordingly, the claims enclosed herein as Appendix A incorporate the amendments indicated in the paper filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 12 is directed to a method for alerting a calling party of a delay before an incoming call will be answered by a user of a called wireless handset (Figure 2). The method recites that the wireless handset answers the incoming call in response to a predefined amount of movement in a physical location of the wireless handset (Page 7, lines 23-28) as detected (location detector 223) by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset (Page 7, lines 25-28). The method further recites muting (Figure 3, block 311) an audio path of the answered call from communication with the user. Finally, the method recites transmission (Figure 3, block 311) of a message that is selected (block 308 of Figure 3) by the user to the calling party.

Claim 34 is directed to a processor-readable medium (Figure 2, memory 218) for alerting a calling party of a delay before an incoming call

Serial No. 10/810,526

will be answered by a user of a called wireless handset (Figure 2). Processor executable instructions in the wireless handset answer the incoming call in response to a predefined amount of movement in a physical location of the wireless handset (Page 7, lines 23-28 and block 222 of Figure 2) as detected (location detector 223) by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset (Page 7, lines 23-28). Processor executable instructions further mute (block 311 of Figure 3 and block 222 of Figure 2) an audio path of the answered call from communication with the user. Finally, processor executable instructions transmit (block 311 of Figure 3 and block 222 of Figure 2) a message that is selected (block 308 of Figure 3) by the user to the calling party.

Claim 56 recites an apparatus (Figure 2) for alerting a calling party of a delay before an incoming call will be answered by a communication terminal (wireless handset 108 of Figure 1). The apparatus comprises means (control 221 of Figure 2) for detecting the incoming call while the communication terminal is not engaged in another call. Further, the apparatus comprises means for detecting movement in a physical location of the communication terminal with the detected movement occurring after the detection of the incoming call (location detector 223 and call notification 222 of Figure 2). Finally, the apparatus comprises means for transmitting (block 311 of Figure 3) a message to the calling party upon detection of the incoming call and movement.

Serial No. 10/810,526

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claims 12-15, 34-37, 56, and 60 stand rejected under 35 U.S.C. § 102(e) and Claims 16-22, 38-44 and 57 stand rejected under 35 U.S.C. § 103(a).**

VII. ARGUMENT

Claims 12-15 and 60 stand rejected under 35 U.S.C. § 102 (e).

The Final Office Action of 12/02/2008 rejected claims 12-15, 34-37, 56, and 60 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0198461 of D.J. Coombes (hereafter referred to as Coombes). Claims 16-18, 20, 22, 38-40, 42, and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Coombes in view of U.S. Patent Application Publication No. 2002/0142756 of J.D. Rutledge, et al. (hereafter referred to as Rutledge). Claims 19, 21, 41, 43, and 57 were rejected under 35 U.S.C. §103(a) as being unpatentable over Coombes in view of Rutledge and further in view of well known prior art (Official Notice).

Claims 12-15 and 60 stand rejected under 35 U.S.C. § 102 (e).

Appellant respectfully submits that Coombes does not answer a incoming call in response to a predefined amount of movement in a physical location as detected by the wireless handset or even in response to detection by the wireless handset of the presence of the wireless handset in a particular physical location.

The Final Office Action of 12/02/2008, on Page 3, made the following statement:

Serial No. 10/810,526

The concepts of 'answering the incoming call by the wireless handset in response to a predefined amount of movement in a physical location of the wireless handset as detected by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset'. Croombes is clearly teach the concepts of receiving/detected the incoming call when the mobile handset of the user that located in a inconvenient or inappropriate location to answer, that is, after receiving the incoming call at a physical location (meeting place, church, theater) the mobile handset automatic answer the call wherein transmit a pre-recording greeting message including the amount of waiting time or some other appropriate phrase that the user desires see paragraphs [0008], [0011-0012], [0016], Fig. 2 illustrate and describe).

Although the Final Office Action claims in first sentence of the statement that the "with the predefined amount of movement occurring after the incoming call is received by the wireless set" is disclosed in Coombes, the second sentence of the statement gives no basis for this assertion nor even claims that such an assertion can be made. The second sentence merely sets forth the idea that a pre-recorded message will be sent if the mobile handset of the user is located in an inconvenient or inappropriate location to answer the incoming call. There is no discussion that a predefined amount of movement occurs after receipt of the incoming call in the second sentence. In fact, the second sentence does not mention a "predefined amount of movement" rather only mentions "located in an inconvenient or inappropriate location".

In fact, Coombes does not disclose the detection of a predefined amount of movement or a particular location by the wireless handset. The paragraphs cited by the Final Office Action do not disclose detection of a predefined amount of movement occurring after receipt of the incoming call or detection of a physical location by the wireless handset. The following paragraphs detail what the text cited by the Office Action discloses.

Serial No. 10/810,526

Paragraph [0008] does not disclose "answering a call in response to a predefined amount of movement". In fact, Paragraph [0008] does not mention detecting a "location". Further, Paragraph [0008] clearly states "the mobile communication device allows the user to either take the call or upon receiving an affirmative indication from the user, automatically answer the call and transmit a pre-recorded greeting message..." There is no disclosure or suggestion that the mobile communication device is responding to a predefined amount of movement or to a location but rather is clearly responding to user input.

Paragraph [0011] does not disclose "answering a call in response to a predefined amount of movement". In fact, Paragraph [0011] does not mention detecting a "location".

Paragraph [0012] does not disclose "answering a call in response to a predefined amount of movement". In fact, Paragraph [0012] does not mention detecting a "location" let alone a "predefined amount of movement". Paragraph [0012] is very clear that the user of the wireless handset (mobile communication device) activates the auto-answer mode for an incoming call by pushing a designated button or soft key not by the wireless handset detecting a physical location of the wireless handset. (See Paragraph [0012], lines 24-42.) Once the auto-answer mode has been activated by the user for an incoming call, the wireless handset in response to a user selected audio-answer feature option answers the incoming call and transmits a pre-recorded greeting message to the calling party. (See Paragraph [0012], lines 45-55.)

Paragraph [0016] does not disclose "answering a call in response to a predefined amount of movement". In fact, Paragraph [0016] does not mention detecting a "location". Paragraph [0016] states "thus, the invention provides for a means in apparatus for auto-answering an

Serial No. 10/810,526

incoming call at a mobile communication device. This allows the user of the mobile communication device to auto-answer calls and put them on hold briefly until the user can attend to the call. This will be of benefit, for example, when the user is speaking at a meeting and cannot simply stop to answer a call but does wish to speak to the calling party." There is no disclosure or suggestion that the mobile communication device is detecting the location of the meeting and automatically answering the call in response to such a detection. Since Coombes only discloses that the auto-answering mode is activated by an input from the user as is detailed in Paragraphs [0008] and [0012], it is clear that the mobile communication device in Paragraph [0016] is activating the auto-answering mode in response to an input from the user since no other input is disclosed in Coombes.

Appellant respectfully submits that claim 12 is patentable under 35 U.S.C. §102(e) for these reasons.

Dependent claims 13-15 and 60 are directly or indirectly dependent on claim 12 and are patentable for at least the same reasons as independent claim 12 under 35 U.S.C. §102(e).

Claims 34-37 stand rejected under 35 U.S.C. § 102(e).

Applicant respectfully submits that claim 34 is patentable under 35 U.S.C. §102(e) for the same reasons as claim 12.

Dependent claims 35-37 are directly or indirectly dependent on claim 34 and are patentable for at least the same reasons as independent claim 34 under 35 U.S.C. §102(e).

Serial No. 10/810,526

Claim 56 stands rejected under 35 U.S.C. § 102(e).

Claim 56 recites a apparatus that comprises means for detecting movement in a physical location of the communication terminal with the detected movement occurring after the detection of the incoming call. The apparatus also comprises means for transmitting a message to the calling party upon detection of the incoming call and movement. As was clearly shown in the discussion of claim 12, Coombes does not disclose detecting movement in the physical location of a communication terminal after detection of an incoming call or even the detection of a physical location. Therefore, Coombes can not disclose apparatus for the detection of movement after detection of an incoming call and transmission of a message upon detection of the incoming call and movement as is clearly recited in claim 56.

Applicant respectfully submits that claim 56 is patentable under 35 U.S.C. §102(e).

Claims 16-18, 20, and 22 stand rejected under 35 U.S.C. §103(a) as unpatentable over Coombes in view of Rutledge.

Claim 12 is patentable over Coombes in view of Rutledge since Rutledge does not disclose the detection of a predefined movement or detection of a location by a wireless handset. The Final Office Action on Page 5 only cited Rutledge for disclosing "the steps of receiving a time specifying the delay; and inserting the time into a pre-defined message". Appellant respectfully submits that claim 12 is patentable under 35 U.S.C. §103(a) over Coombes in view of Rutledge.

Dependent claims 16-18, 20, and 22 are directly or indirectly dependent on claim 12 and are patentable for at least the same reasons as independent claim 12 under 35 U.S.C. §103(a).

Serial No. 10/810,526

Claims 38-40, 42, and 44 stand rejected under 35 U.S.C. §103(a) as unpatentable over Coombes in view of Rutledge.

Claim 34 is patentable over Coombes in view of Rutledge under 35 U.S.C. §103(a) for the same reasons as claim 12.

Dependent claims 38-40, 42, and 44 are directly or indirectly dependent on claim 34 and are patentable for at least the same reasons as independent claim 34 under 35 U.S.C. §103(a).

Claims 19 and 21 stand rejected under 35 U.S.C. §103(a) as unpatentable over Coombes in view of Rutledge and further in view of Official Notice.

As was clearly shown in the previous paragraphs, claim 12 is patentable under 35 U.S.C. §103(a) over Coombes in view of Rutledge. The Final Office Action on page 6 only took Official Notice of the fact that it is known in the art that users of wireless handsets can send messages by text. Hence, claim 12 is patentable under 35 U.S.C. §103(a) over Coombes in view of Rutledge and further in view of Official Notice.

Dependent claims 19 and 21 are directly or indirectly dependent on claim 12 and are patentable for at least the same reasons as independent claim 12 under 35 U.S.C. §103(a).

Claims 41 and 43 stand rejected under 35 U.S.C. §103(a) as unpatentable over Coombes in view of Rutledge and further in view of Official Notice.

Appellant submits that claim 34 is patentable for the same reasons as claim 12 under 35 U.S.C. §103(a) over Coombes in view of Rutledge and further in view of Official Notice.

Dependent claims 41 and 43 are directly or indirectly dependent on claim 34 and are patentable for at least the same reasons as independent claim 34 under 35 U.S.C. §103(a).

Serial No. 10/810,526

Claim 57 stands rejected under 35 U.S.C. §103(a) as unpatentable over Coombes in view of Rutledge and further in view of Official Notice.

Appellant submits that claim 56 is patentable for the same reasons as claim 12 under 35 U.S.C. §103(a) over Coombes in view of Rutledge and further in view of Official Notice.

Dependent claim 57 is directly dependent on claim 56 and is patentable for at least the same reasons as independent claim 56 under 35 U.S.C. §103(a).

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

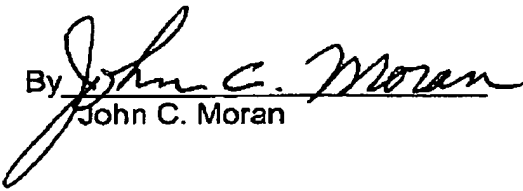
IX. EVIDENCE

No evidence pursuant to § 1.130, 1.131, or 1.132, or entered by or relied upon by the Examiner, is being submitted.

X. RELATED PROCEEDINGS

No related proceedings as indicated in II. above.

Respectfully submitted,

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Serial No. 10/810,526

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APPENDIX A - CLAIMS

Claims Involved in the Appeal of Application Serial No. 10/810,526

- 1 1. (Canceled)
- 1 2. (Canceled)
- 1 3. (Canceled)
- 1 4. (Canceled)
- 1 5. (Canceled)
- 1 6. (Canceled)
- 1 7. (Canceled)
- 1 8. (Canceled)
- 1 9. (Canceled)
- 1 10. (Canceled)
- 1 11. (Canceled)
- 1 12. (Previously Presented) A method for alerting a calling
2 party of a delay before an incoming call will be answered by a user of a
3 called wireless handset, comprising the steps of:

Serial No. 10/810,526

4 answering the incoming call by the wireless handset in
5 response to a predefined amount of movement in a physical location of
6 the wireless handset as detected by the wireless handset when the
7 telecommunication terminal is not engaged in another call with the
8 predefined amount of movement occurring after the incoming call is
9 received by the wireless handset;
10 muting an audio path of the answered call from communication
11 with the user; and
12 transmitting a message that is selected by the user to the
13 calling party.

1 13. (Original) The method of claim 12 further comprises the
2 step of maintaining the incoming call from the calling party with the audio
3 path muted to the user; and
4 allowing audio communication by the user with calling party in
5 response to another input from the user.

1 14. (Original) The method of claim 12 further comprises the
2 step of terminating the incoming call after transmission of the message.

1 15. (Original) The method of claim 12 wherein the message is
2 an audio message and the audio message is transmitted via the audio
3 path to the calling party.

1 16. (Original) The method of claim 15 further comprises the
2 steps of receiving a time specifying the delay; and
3 inserting the time into a predefined message.

Serial No. 10/810,526

1 17. (Original) The method of claim 16 wherein the step of
2 inserting comprises converting the time to audio information for insertion
3 into the predefined message.

1 18. (Original) The method of claim 17 further comprises the
2 step of recording the predefined message.

1 19. (Original) The method of claim 12 wherein the message is
2 a text message.

1 20. (Original) The method of claim 19 further comprises the
2 steps of receiving a time specifying the delay; and
3 inserting the time into a predefined message.

1 21. (Original) The method of claim 19 wherein the
2 transmission of the text message is via a text messaging link.

1 22. (Original) The method of claim 20 further comprises the
2 step of entering the predefined message.

1 23. (Canceled)

1 24. (Canceled)

1 25. (Canceled)

1 26. (Canceled)

1 27. (Canceled)

Serial No. 10/810,526

1 28. (Canceled)

1 29. (Canceled)

1 30. (Canceled)

1 31. (Canceled)

1 32. (Canceled)

1 33. (Canceled)

1 34. (Previously Presented) A processor-readable medium for
2 alerting a calling party of a delay before an incoming call will be answered
3 by a user of a called wireless handset, comprising processor-executable
4 instructions configured for:

5 answering the incoming call by the wireless handset in
6 response to a predefined amount of movement in a physical location of
7 the wireless handset as detected by the wireless handset when the
8 telecommunication terminal is not engaged in another call with the
9 predefined amount of movement occurring after the incoming call is
10 received by the wireless handset;

11 muting an audio path of the answered call from communication
12 with the user; and

13 transmitting a message that is selected by the user to the
14 calling party.

1 35. (Original) The processor-readable medium of claim 34
2 further comprises maintaining the incoming call from the calling party with
3 the audio path muted to the user; and

Serial No. 10/810,526

4 allowing audio communication by the user with calling party in
5 response to another input from the user.

1 36. (Original) The processor-readable medium of claim 34
2 further comprises terminating the incoming call after transmission of the
3 message.

1 37. (Original) The processor-readable medium of claim 34
2 wherein the message is an audio message and the audio message is
3 transmitted via the audio path to the calling party.

1 38. (Original) The processor-readable medium of claim 37
2 further comprises receiving a time specifying the delay; and
3 inserting the time into a predefined message.

1 39. (Original) The processor-readable medium of claim 38
2 wherein the inserting comprises converting the time to audio information
3 for insertion into the predefined message.

1 40. (Original) The processor-readable medium of claim 39
2 further comprises recording the predefined message.

1 41. (Original) The processor-readable medium of claim 34
2 wherein the message is a text message.

1 42. (Original) The processor-readable medium of claim 41
2 further comprises receiving a time specifying the delay; and
3 inserting the time into a predefined message.

1 43. (Original) The processor-readable medium of claim 41
2 wherein the transmission of the text message is via a text messaging link.

Serial No. 10/810,526

1 44. (Original) The processor-readable medium of claim 42
2 further comprises entering the predefined message.

1 45. (Canceled)

1 46. (Canceled)

1 47. (Canceled)

1 48. (Canceled)

1 49. (Canceled)

1 50. (Canceled)

1 51. (Canceled)

1 52. (Canceled)

1 53. (Canceled)

1 54. (Canceled)

1 55. (Canceled)

1 56. (Previously Presented) An apparatus for alerting a calling
2 party of a delay before an incoming call will be answered by a
3 communication terminal, comprising:
4 means for detecting the incoming call while the communication
5 terminal is not engaged in another call;

Serial No. 10/810,526

6 means for detecting movement in a physical location of the
7 communication terminal with the detected movement occurring after the
8 detection of the incoming call; and
9 means for transmitting a message to the calling party upon
10 detection of the incoming call and movement.

1 57. (Original) The apparatus of claim 56 wherein the means
2 for transmitting comprises means for sending a textual message.

1 58. (Canceled)

1 59. (Canceled)

1 60. (Original) An apparatus for implementing the steps of
2 claim 12.

1 61. (Canceled)

1 62. (Canceled)

1 63. (Canceled).

Application No.: 10/117,162

APPENDIX B - EVIDENCE

None.

Application No.: 10/117,162

APPENDIX C - RELATED PROCEEDINGS

None.